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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,935	10/02/2003	Michael Patrick Charbeneau		9727

7590 01/12/2005

Mark R. Malek
202 North Harbor City Blvd
Suite 200
Melbourne, FL 32935

EXAMINER

CHAN, KO HUNG

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/677,935

Applicant(s)

CHARBENEAU, MICHAEL
PATRICK

Examiner

Korie H. Chan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-23 is/are pending in the application.
- 4a) Of the above claim(s) 18-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION
Election/Restrictions

Newly submitted claims 18-23 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 18-23 are directed to a method of retaining an object in a vehicle classified in class 29, subclass 700 while claims 4-17 are directed to an article of manufacture, a retaining device originally claimed also in cancelled claims 1-3 classified in class 248, subclass 100. These two groups of inventions are required restriction under 35 U.S.C. 121. The inventions are distinct, each from the other because of the following reasons:

Inventions of the method and of the article discussed above are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the process for using the product or retaining an object to a vehicle as claimed can be practiced with another materially different product such as a container detachably mounted in the vehicle for retaining an object for example. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 18-23 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "arcuate shape body" recited in claim 13 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of

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the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 13-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 13 recites that the body having an arcuate shape is not supported by the original specification. The original specification merely states in paragraph [0025] that the "retainer can have other shapes such as circular, oval, square, triangular". However, nowhere does it specify an arcuate shape. Such is consider new matter.

Claims 12, 15, and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The preamble of independent claims 4 and 13

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from which claims 12, 15, and 17 depend sets forth an intended use of the retaining device "for use in a vehicle"; however, the language found in claims 12, 15, and 17 is inconsistent with the intended use language in the preamble by reciting positive connection or relation of the retaining device body relative to a vehicle seat such as "said body is detachably mounted to a vehicle seat" (claim 12, line 2); "said body is mounted to the vehicle seat" (claim 15, lines 3-4); or "detachably mount said body to the vehicle seat of the vehicle" (claim 17, lines 4-5). Examiner suggest language such as "said body adapted to detachably mount to a vehicle seat" for instance.

Claim Rejections - 35 USC § 102

Claims 4, 13, and 17 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by Bell (US patent no. 6,105,839). Bell discloses a retaining device for use in a vehicle comprising: body (figure 1) having an upper portion (6, figure 1), a lower portion (7, figure 1), and a medial portion (19), the body having a polygonal shape, plurality of spaced apart apertures (16 on bar 19) formed in the medial portion, a first plurality of passageways (16 on bar 6) formed in the upper portion, and a second plurality of passageways (17 on bar 7) formed in the lower portion; and first pair of mounting members being straps (30, figure 5) that matingly engage the first plurality of passageways, and a second pair of mounting members (33, figure 7) that matingly engage the second plurality of passageways so that the body may be detachably mounted within the vehicle to allow at least one object to be retained on the body when mounted.

Claim Rejections - 35 USC § 103

Claims 4-7, 10-15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kifer (US patent no. 5,415,457) in view of Bell (US patent no. 6,105,839). Kifer discloses a retaining device (36, figure 6) for use in a vehicle comprising: body having an upper portion (37, fig. 6), a lower portion (26), and a medial portion (36), the body having a polygonal shape, plurality of spaced apart C-shaped apertures (30) formed in the medial portion, a first plurality of passageways (24) longitudinally extending in the upper portion, and first mounting members (40, figure 4) that matingly engage the first plurality of passageways, and a second pair of mounting members (26, figure 4 and 6) at the lower portion of the body so that the body may be detachably mounted within the vehicle to allow at least one object to be retained on the body when mounted.

Kifer does not show pairs of mounting members in upper and lower portion being straps nor a second plurality of passageways formed in the lower portion. However, mounting arrange of the strap type mating with longitudinal passages is notoriously old and well-known in the art. They are known to have the advantage of adjustably tying down a retaining body to a structure.

Bell teaches in a retaining device for use in a vehicle comprising: body (figure 1) having an upper portion (6, figure 1), a lower portion (7, figure 1), and a medial portion (19), the body having a polygonal shape, plurality of spaced apart apertures (16 on bar 19) formed in the medial portion, a first plurality of passageways (16 on bar 6) formed in the upper portion, and a second plurality of passageways (17 on bar 7) formed along

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the longitudinal axis of the lower portion; and first pair of mounting members being straps (30, figure 5) that matingly engage the first plurality of passageways, and a second pair of mounting members (33, figure 7) that matingly engage the second plurality of passageways so that the body may be detachably mounted within the vehicle to allow at least one object to be retained on the body when mounted. It would have been obvious to one of ordinary skill in the art to have modified the mounting members and passageways of Kifer such that it is of the strap type mating with longitudinal passages as taught by Bell so as to provide the well-known advantage of adjustably tying down the retaining device to a vehicle seat.

Claims 8, 9, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kifer (US patent no. 5,415,457) in view of Bell (US patent no. 6,105,839) as applied to claims 4, 5, and 13 above, and further in view of Fernandez (US Patent Publication no. 20020108280). Kifer and Bell combined disclosed all the claimed features of applicant's invention except for the shape of the body as being octagonal or providing indicia on the body. Fernandez discloses a retaining device for coins having a body of octagonal shape (figure 4) wherein indicia can be placed on the body (paragraph 00032, lines 9-12) for identifying articles retained in the body. It would have been obvious to one of ordinary skill in the art to have modify the body of of the retaining member of Kifer and Bell combined such that it is octagonal for aesthetics with indicia for identifying purposes as taught to be desirable by Fernandez.

Response to Arguments

Applicant's arguments with respect to claims 4-23 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

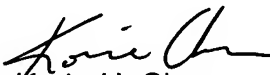
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Korie H. Chan whose telephone number is 703-305-8079. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun can be reached on 703-308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Korie H. Chan
Primary Examiner
Art Unit 3632

khc
January 7, 2005